

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	DIVISION OF WATER
)	POLLUTION CONTROL
)	
HRRW PROPERTIES, LLC)	
)	
ACTION PROPERTIES)	CASE NO. 07-095
)	
RESPONDENTS)	
)	

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, Director of the Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed Director of the Division of Water Pollution Control (hereinafter the "division") by the Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "department").

II.

HRRW Properties LLC, (hereinafter the "Respondent HRRW") is an active limited liability corporation licensed to conduct business in the State of Tennessee and is the owner of HRRW Trailer Park located at 500 Steam Plant Road, Gallatin, in Sumner County Tennessee, 37066 (hereinafter the "site"). Service of process may be made on

Respondent HRRW, through Mr. Daryl Holt at 695 Nashville Pike, Suite 301, Gallatin, TN 37066.

III.

Action Properties (hereinafter the "Respondent AP") is employed by Respondent HRRW to manage the site. Service of process may be made on Respondent AP through Sarina Brownlee located at 130 West Eastland Street, Gallatin, in Sumner County Tennessee, 37066.

JURISDICTION

IV.

Whenever the Commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) § 69-3-101 *et seq.*, the *Water Quality Control Act*, (hereinafter the "Act") has occurred, or is about to occur, the Commissioner may issue a complaint to the violator and may order that corrective action be taken, pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the Commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated, pursuant to T.C.A. § 69-3-105, and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (hereinafter the "Rules").

V.

The Respondents are “persons” as defined at T.C.A. § 69-3-103(20) and, as herein described, have violated the Act.

VI.

T.C.A. § 69-3-108 requires that a person obtain a permit from the department to operate a sewerage system.

VII.

The unnamed tributary to the Cumberland River, referred to herein, is “waters of the state” as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, “Use Classifications for Surface Waters”, is contained in the *Official Compilation of Rules and Regulations for the State of Tennessee*. Accordingly, these water bodies have been classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife.

FACTS

VIII.

On October 10, 2003, division personnel were notified that a privately owned sewage pump station was overflowing at a trailer park located at 500 Steam Plant Road, in Gallatin. Division of Ground Water Protection personnel had observed the overflow while working in Sumner County and alerted division personnel.

IX.

On October 13, 2003, division personnel discussed this matter with Mr. David Gregory, Superintendent of Gallatin Public Utilities, for the City of Gallatin. Mr. Gregory indicated that he was familiar with the problem and confirmed that HRRW pump station and its force main were not owned or maintained by the City of Gallatin.

X.

On October 15, 2003, division personnel issued Mr. Daryl Holt with Respondent HRRW a Notice of Violation (NOV) for operating an unpermitted sewage collection system. In the NOV, division personnel requested that Respondent HRRW submit an application for a State Operation Permit (SOP) and be prepared to meet all of the applicable requirements, or to have the City of Gallatin agree to assume ownership and maintenance of the system. In the NOV, division personnel also requested Respondent HRRW to submit a corrective action plan and compliance schedule (CAP-CS) within 30 days of receipt of the NOV detailing what steps would be taken to bring the system into compliance with the Act.

XI.

On November 12, 2003, Mr. Craig Hayes sent the division a response letter to the NOV on behalf of Respondent HRRW. In his letter, Mr. Hayes explained that the overflow of sewage had been caused by a break in a cleanout and was not actually a problem with the pump station as previously reported. Mr. Hayes also questioned

whether a permit was needed when the collection system emptied into the City of Gallatin's collection system.

XII.

On November 19, 2003, division personnel replied back to Mr. Hayes and reiterated that a permit was required for the operation of a collection system under the Act and included a copy of the Act as well as a copy of the Water Environmental Health Act, which also has language granting the State of Tennessee regulatory authority over collection systems.

XIII.

On Tuesday, August 17, 2004, division personnel received a complaint that sewage was being discharged from a sewer line at the site. The complainant said that the sewage discharge began on August 11, 2004, and was flooding the trailer park access road. According to the complainant, efforts by local residents to get corrective action from Respondent AP, and the Gallatin City Codes Department had been unsuccessful.

XIV.

On August 18, 2004, division personnel called and left a message with Respondent HRRW. Division personnel then called Ms. Sarina Brownlee with Respondent AP, who said that she was unaware of the problem and then said that she hoped to have the problem fixed by the end of the week. Division personnel informed her

that the sewage was a health hazard and must be fixed that day. Ms. Brownlee then said that she would contact Respondent HRRW and try to get the issue resolved.

XV.

On August 19, 2004, Respondent HRRW called to notify division personnel that a plumber had been hired to correct the problem. He informed division personnel that the sewage overflow was the result of a collapsed line, which would be corrected later that day when the backhoe arrived to excavate the line. Respondent HRRW said that he would send the division a written report when the work was completed.

XVI.

On August 27, 2004, division personnel performed a follow-up inspection of the site. During that inspection, division personnel observed that a section of sewer line had been laid in front of trailer number 1 and that repairs on a sewer line cleanout were being completed in front of trailer number 28. Division personnel did not observe any discharge of sewage during the inspection.

Upon returning to the office, division personnel sent a second NOV to Respondent HRRW. In the NOV, division personnel reiterated that the system must have coverage under a permit and that the Respondents were in violation of the Act.

XVI.

On July 26, 2005, division personnel received a complaint that raw sewage was discharging from a trailer park in Sumner County. Division personnel then notified Mr.

Mark Parker with Gallatin Public Utilities about the complaint. Mr. Parker responded that it was likely grease, which had been the problem last time there was a sewage overflow. Mr. Parker promised to send over a technician to investigate the complaint.

XVIII.

On July 27, 2005, division personnel inspected the site and observed small pools of sewage around the wet well and in the ditch leading from the wet well to the trailer park driveway. While at the site, division personnel spoke with a resident who stated that the problem had existed for over a year and that repeated complaints to the Respondents had been ignored. Upon returning to the office, division personnel had a voice message from Mr. Parker saying that the discharge force main on the pump station appeared to be broken. Division personnel then contacted Ms. Sarina Brownlee with Respondent AP, who said she would get a plumber to fix the problem right away.

XIX.

On August 4, 2005, division personnel sent Respondent HRRW a third NOV for operating a sewage collection system without a permit. In the NOV, division personnel summarized the previous NOVs and reiterated that the Respondent could either obtain coverage under a standard operating permit or have the City of Gallatin assume ownership of the collection system and pump station. Division personnel again requested that Respondent HRRW submit a corrective action plan to the division within 30 days of receipt of the NOV. A copy of the NOV was also sent to the City of Gallatin.

Division personnel did not receive the corrective action plan.

XX.

On June 8, 2006, division personnel received a complaint that sewage was flowing across the ground at the site.

XXI.

On June 15, 2006, Division personnel inspected the site and verified that sewage was pooling on the ground in front of trailer number 42. The source of the sewage appeared to be from a missing cleanout cap underneath trailer number 42. No one was available to speak with at the site.

XXII.

On June 20, 2006, division personnel discussed the sewage overflow with Mr. Holt, who said that the residents in the trailer park would often sabotage the system when they got behind in their rent but that he would get the problem corrected right away. Mr. Holt also said that the city attorneys for Gallatin were looking into what improvements would be necessary in order for the City of Gallatin to assume ownership of the system. Division personnel requested that Mr. Holt send in a letter detailing the status of the system and the items discussed during the phone conversation.

XXIII.

On December 7, 2006, division personnel received another complaint that raw sewage was discharging from the site.

XXIV.

On December 8, 2006, division personnel investigated the complaint and observed that a sewage odor permeated the area. Division personnel discovered a cleanout pipe filled with gravel and sewage in front of trailer 28. Sewage was also observed in the wet weather conveyance leading away from the cleanout. Standing pools of sewage were also observed between trailer numbers 17 and 21.

XXV.

While at the site, division personnel spoke with a septic service provider who had been called by Strong Construction Company. According to the operator of the septic truck he had visited the site at least 3 times during the previous year to address sewage overflows.

XXVI.

On March 7, 2007, personnel from the City of Gallatin contacted division personnel via electronic mail to inform the division that there had been another complaint of raw sewage discharging from the site.

XXVII.

On April 3, 2007, division personnel received a complaint that sewage was overflowing and pooling around several of the trailers.

XXVIII.

On April 12, 2007, division personnel visited the site in response to the aforementioned complaint. Upon arriving at the site, division personnel detected the aroma of sewage in the air and observed sewage in a drainage ditch near the railroad tracks. Upon returning to the office division personnel referred the case for enforcement.

XXIX.

On April 9, 2007, The City of Gallatin sent Respondent HRRW a letter with a timeline detailing several milestones that the Respondents must meet. The timeline included the following items:

- Submit an engineering plan detailing all necessary improvements to the pump station and system no later than May 5, 2007.
- Obtain all regulatory approvals necessary to complete the improvements detailed in the engineering plan no later than June 5, 2007.
- Send in notification of bid award, confirming the selection of a contractor no later than June 20, 2007.
- Complete all construction no later than September 20, 2007.

XXX.

On May 23, 2007, division personnel received the plans and specifications for sewer line improvements for HRRW Trailer Park at 500 Steam Plant Road in Gallatin. The plans were subsequently approved on June 7, 2007.

XXXI.

On June 13, 2007, division personnel spoke with Assistant Superintendent David Kellogg of Gallatin Public Utilities and the sewer system design engineer Richard Jones. Both stated that they expected the City of Gallatin to assume ownership of HRRW sewer system provided it meets the City of Gallatin's specifications.

XXXII.

During the course of investigating this matter, the Division incurred damages in the amount of ONE THOUSAND THREE HUNDRED AND FORTY-ONE DOLLARS AND SEVENTY CENTS (\$1,341.70).

VIOLATIONS

XXXIII.

By operating a sewage collection system without authorization under a Standard Operating Permit, the Respondents have violated T.C.A. §§ 69-3-108(a)(b) and 69-3-114(b).

T.C.A. §69-3-108(a) states:

- (a) Every person who is or is planning to carry on any of the following activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.
- (b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of

the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes, or other wastes into water, or a location from which it is likely that the discharged substances will move into waters;

T.C.A. § 69-3-114(b) states:

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

XXXIV.

By refusing to furnish information requested by the division, the Respondents have violated T.C.A. §§ 69-3-108(b) and 69-3-114(b) as referenced above.

XXXV.

By allowing unpermitted discharges of sewage into waters of the state or to a location where the discharge was likely to enter waters of the state, the Respondents have violated T.C.A. §§ 69-3-108(b) and 69-3-114(b) as referenced above.

ORDER AND ASSESSMENT

XXXVI.

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-107, 109, 115–16, I, Paul E. Davis, hereby issue the following ORDER AND ASSESSMENT to the Respondents:

1. As soon as possible, but no later than 90 DAYS of receipt of this Order, the Respondents shall submit an application for coverage under a SOP permit. As an alternative to obtaining the permit, the Respondents may provide documentation that the City of Gallatin has assumed ownership and operation of the system. Documentation should be sent to the manager of the division of Water pollution Control in the Nashville Environmental Field Office (N-EFO) located at 711 R.S. Gass Blvd, Nashville, Tennessee 37216, and a copy to the manager of the Enforcement and Compliance Section of Water Pollution Control, 6th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1534.

2. As soon as possible, but no later than 60 DAYS of receipt of this Order,

the Respondents shall complete all improvements to the system as proposed in the approved plans and send in documentation of completion to the manager of the division of Water Pollution Control in the N-EFO and a copy to the manager of the Enforcement and Compliance Section of Water Pollution Control, at the respective addresses in Item 1.

3. If the Respondents choose to apply for a SOP and continue operating the system as opposed to having the City of Gallatin assume ownership, then the Respondents shall within 120 DAYS of receipt of this Order, submit to the division, a sewer overflow response plan (SORP). The SORP shall include procedures for minimizing health impacts and shall include measures to be taken when overflows discharge on local streets or other public areas. The SORP shall also include appropriate measures for the notification of affected property owners and stream users, and shall include notification of the news media when necessary to protect public health. The SORP shall state specific procedures for notifying known downstream users in the event that untreated wastewater is discharged to waters of the state by sanitary sewer overflow (SSO). These procedures shall include, but not be limited to, provisions for posting warning signs at places where the general public could gain access to polluted waters. Further, posted signs shall remain in place until in-stream monitoring reveals that the water body has returned to normal background conditions. In the event that the division requires the Respondent to modify/revise the SORP, the Respondent shall submit the modified/revised

SORP to the division within thirty days of the date of notification. The SORP shall be submitted to the N-EFO and a copy to the manager of the Enforcement and Compliance Section at the respective addresses in Item 1.

4. Within 30 DAYS of written approval by the division, the Respondents shall fully implement the SORP. The Respondents shall notify the division, in writing, once the SORP has been fully implemented. The notification shall be submitted to the N-EFO and a copy to the manager of the Enforcement and Compliance Section at the respective addresses in Item 1.

5. The Respondents shall start submitting monthly reports detailing the operation and maintenance of the system, provide a list of any overflows that occurred during the preceding month, including but not limited to, the number of overflows, duration of each overflow, amount of sewage lost from the system, whether or not it entered waters of the state, the cause of the overflow, and the corrective actions taken to eliminate the overflow. These monthly reports shall be sent to the division and postmarked no later than the 15th of each month following the reporting period for as long as the Respondents own or operate the system and shall be submitted in duplicate to the manager of the division of Water pollution Control in the N-EFO and to the manager of the Enforcement and Compliance Section of Water Pollution Control at the addresses above. The first report shall be for the month of August 2007, and shall be postmarked no later than September 15, 2007.

6. The Respondents shall complete all requirements of the order and be in full compliance with the Act no later than January 31, 2008. Documentation shall be submitted in duplicate to the manager of the division of Water pollution Control in the N-EFO and to the manager of the Enforcement and Compliance Section of Water Pollution Control at the addresses above.

7. The Respondents are hereby assessed a CIVIL PENALTY in the amount of SEVENTY-FOUR THOUSAND TWO HUNDRED AND FIFTY DOLLARS (\$74,250.00), payable as follows:

- (a) The Respondents shall, within 30 DAYS of receipt of this Order and Assessment, pay to the division FIFTEEN THOUSAND DOLLARS (\$15,000.00).
- (b) In the event the Respondents fail to comply with Item 1 above, the Respondents shall pay TEN THOUSAND DOLLARS (\$10,000.00) to the division, to be paid within 30 DAYS of default.
- (c) In the event the Respondents fail to comply with Item 2 above, the Respondents shall pay TEN THOUSAND DOLLARS (\$10,000.00) to the division, to be paid within 30 DAYS of default.
- (d) In the event the Respondents fail to comply with Item 3 above, the Respondents shall pay TEN THOUSAND DOLLARS

(\$10,000.00) to the division, to be paid within 30 DAYS of default.

(e) In the event the Respondents fail to comply with Item 4 above, the Respondents shall pay TEN THOUSAND DOLLARS (\$10,000.00) to the division, to be paid within 30 DAYS of default.

(f) In the event the Respondents fail to comply with Item 5 above, the Respondents shall pay TEN THOUSAND DOLLARS (\$10,000.00) to the division, to be paid within 30 DAYS of default.

(g) In the event the Respondents fail to comply with Item 6 above, the Respondents shall pay NINE THOUSAND TWO HUNDRED AND FIFTY DOLLARS (\$9,250.00) to the division, to be paid within 30 DAYS of default.

8. The Respondents are assessed DAMAGES in the amount of ONE THOUSAND THREE HUNDRED AND FORTY-ONE DOLLARS AND SEVENTY CENTS (\$1,341.70), which shall be paid to the Department within thirty (30) days from the receipt of this Order.

9. The Respondents shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The Director of the Division of Water Pollution Control may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondent shall submit a written request to be received a minimum of 30 days in advance of the compliance date. The request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension will be in writing.

Further, the Respondents are advised that the foregoing Order and Assessment is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the Order and Assessment will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the Director of the Division of Water Pollution Control on this 9th day of July 2007.

A handwritten signature in black ink, appearing to read "Paul E. Davis", is written over a horizontal line.

PAUL E. DAVIS, P.E.

Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§ 69-3-109, 115, allow any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the director at the address below a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this Order and Assessment.

If the required written petition is not filed within thirty (30) days of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§ 69-3-109, 115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 et seq of the Uniform Administrative Procedures Act, and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payment of the civil penalty shall be made payable to “Treasurer, State of Tennessee,” and sent to the Tennessee Department of Environment and Conservation, Division of Water Pollution Control - Enforcement & Compliance Section, 6th Floor L&C Annex, 401 Church Street, Nashville, TN 37243. All other correspondence regarding this matter should be sent to Paul E. Davis, Director, Division of Water Pollution Control, at the address above. All payments and correspondence should include the Respondent’s name and case number as shown on the first page of this Order and Assessment.